

State of Utah

Title and Escrow Commission Meeting

Meeting Information

Date: **August 13, 2007**

Time: **9:00am**

Place: **Backman Title**

167 E. 6100 S, Ste 250

Members

Commission Members

Chair, Glen W. Roberts, *Utah Cnty*

David M. Lattin, *Salt Lake Cnty*

R. Curt Webb, *Cache Cnty*

Canyon W. Anderson, *Davis Cnty*

Garry M. Goodsell, *Iron Cnty*

Department Staff

John E. "Mickey" Braun, Jr.

Perri Babalis

Darrel Powell

Mark Kleinfeld

Ass't Commissioner

AG Legal Counsel

Dir. Market Conduct

Admin. Law Judge

Gerri Jones

Sheila Curtis

Jilene Whitby

MC Examiner

MC Examiner

PIO/Recorder

Public

James Seaman

Bob Rice

Jeff Wiener

David Moore

Lynn Mabey

Doug Curlis

MINUTES

- I. **Welcome and Introductions** / Glen Roberts, Chair
Glen began the meeting at 9:05a.m.
- II. **Adoption of Minutes of Previous Meeting**
Canyon suggested moving the fourth sentence, beginning with, "It was noted...", in the second bullet of Section IV to the end of the first bullet of the same section. Canyon **moved** to approve the minutes with this change and Curt seconded it.
- III. **Review & Concur with Licensee Report**
Canyon asked the status of Direct Title. Last month the Commission approved the repeal of their license. Mickey noted that the renewal process was automatic and happened to be taking place at the same time as the revocation. Curt moved to approve the licensing report with the exception of Direct Title's renewal. David seconded the motion. The vote was unanimous.
- IV. **Number of Cases Open & Closed**
 - Mickey said the department was assigning more resources to Title regulation.
 - Consumer complaints will now be handled by consumer service analysts rather than Gerri and Sheila.
 - David **moved** to accept the report and Canyon seconded it. The vote was unanimous. Mickey said the report would be placed on the web.
 - Mickey reported that the penalty fee matrix had been revised. Many of the fees have been tripled and quadrupled. He wanted to review the reasoning behind these increases before bringing it to the Commission. It should be ready for their review next month. Once approved fast track enforcement can be put into place.
- V. **Review & Concur with Enforcement Case Report**
Mickey reported there were no enforcement cases to review.
- VI. **Old Business**
 - **Free Leads for Loans**
 - Gerri received an email from Joseph McPhee asserting "free leads for loans" were an unfair inducement, creating an uneven playing field. Some obtain them free of charge

and others are required to pay varying fees. Canyon asked how the field could be leveled when no one would report violations.

- Glen suggested Joseph file a complaint with specifics included.
- Curt thought this was a very big issue costing some thousands of dollars each month.
- Dave thought Rule R590-153, *Unfair Inducements and Marketing Practices in Obtaining Title Insurance Business*, addressed this issue. Canyon thought it was confusing. It was noted that how one searches a Plat map for information could determine if the search is legal or illegal.
- The Commission decided to **put this issue on next month's agenda**. They should come prepared to discuss the possibility of setting a limit so everyone is not in violation of the law.
- **Status on Rules R590-153, R592-5, R592-6 / Mickey**
 - Changes to R590-153 have been adopted.
 - The non-substantive changes to Rule R592-5, *Title Insurance Product or Service Approval for a Dual Licensed Title Licensee*, were deemed to be substantive by the Governor's Office. The rule was then re-filed showing the changes as substantive. Another comment period has been provided, ending 9-14-07. No hearing was set.
 - Additional substantive changes were made to R592-6, *Split Closings in Title Insurance*, and filed for an additional comment period ending 9-14-07. No hearing was set.
 - Lynn Mabey expressed concern with the Split Closing rule. He disagrees with the AGs opinion and wanted to know their justification. He asked if he could have a copy of it but was told it was a part of client-attorney privilege. He asked for clarification on the rule. It disrupts the relationship between the client and agent. Mr. Mabey wanted a definition of "transaction." The definition in 31A-2-301(54) is for escrow and the issue in the Split Closing rule is with a real estate transaction. At least one title product needs to be issued to make it a title transaction.
 - Mr. Mabey was asked how the public would be protected against a bad act if no escrow were included? He suggested the agent be required to carry E&O coverage. Canyon noted that E&O does not cover fraud. It was also noted that one could get an escrow license outside of the Insurance Department. What security is provided in these cases? Perri said they had financial backing. Glen said the law was written in 1983, before splits were contemplated. Mr. Mabey noted that title agents are required to have a bond for financial responsibility.
 - Glen asked that this subject be **put on next month's agenda**. We have an obligation to protect the consumer because they come to us.

VII. New Business

- **Attorneys with Real Estate Experience Exempt from Experience Requirements in 31A-23a-204-8(a) - New Rule? / Curt**
 - The Commission received a request to exempt attorneys from the experience requirements in 31A-23a-204-8(a). Glen asked Perri to check the law to see if the code would allow such an exemption. This is only an issue when an attorney wants to create an agency. It was noted that there were no experience requirements if they wanted to obtain a title license. They can issue up to 24 title policies in a year without a license. Mickey noted that attorneys don't have the same reporting requirements as title agents. They must file escrow charges but do not have to have an agency license since they are appointed with a company.
 - How do we know when they write 25? Glen suggested auditing them. Mickey expressed concern with putting so many resources on one small group of people. Curt wondered about requiring them to report? Gerri said that Attorneys Title agents are

required to file an annual statement that would have this information in it. Mickey said the department would review this issue.

- The people who are concerned about this issue have not been able to attend the Commission meetings. Glen asked that this topic not be put on the agenda until the interested parties request it and are able to attend.

VIII. **Other Business** from Committee Members

- **Real Estate Commission Meeting** / Curt

Curt attended a Real Estate Commission meeting. Split closings were discussed. They were generally in favor of having a single fiduciary until they realized the lender would be required to send money to another agency without a closing protection letter. They agreed controls were needed.

- **Sharing a lobby** / Curt

There is no rule to enforce a title agency sharing a lobby with a related business. Rule R590-153 needs to be amended to do this.

- **Priorities** / Curt

Curt inquired as to what else needed to be done on their list of priorities?

- ✓ The fiduciary rule is nearly finished.
- ✓ A flip bulletin and rule have been written.
- ✓ Enforcement has come a long way.
- ✓ Controlled business issues cannot be solved by rule.
- ✓ Inducements and anything else dealing with 153 still needs to be worked on. The Commission agreed to rewrite Rule R590-153. Canyon proposed that improperly charged rates and fees be made a part of this discussion (escrow). Curt suggested it not be allowed to dominate the discussion. This will be **added to next month's agenda**. All were encouraged to review the rule before then.

IX. **Adjourned:** 10:45am.

X. **Next Meeting:** September 10, 2007, 9a.m.

Next Meeting

9:00 a.m.

September 10, 2007

October 9, 2007

November 12, 2007

December 10, 2007